

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA Nos.3186 and 3192 of 2011
Date of decision:- 22.02.2018**

Balwant Singh and others

...Appellants

Versus

Manik Ram and Others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Amarjit Singh Virak, Advocate,
for the appellants.

Mr. CB Goel, Advocate ,
for respondent NO. 1 in RSA No. 3192 of 2011 and
for respondent No.5 in RSA No. 3186 of 2011.

Mr. B. B. S. Randhawa, Advocate,
for respondent Nos. 1 to 3 in RSA no. 3186 of 2011.
and for respondent Nos. 2 to 4 in RSA No. 3192 of 2011.

RITU BAHRI J. (Oral)

The present appeals have been filed by the appellants against the judgment dated 31.05.2011 passed by the Additional District Judge, Sonapat, whereby appeals filed by the present respondents has been accepted and suit dismissed against the judgment dated 30.03.2010 whereby the suit of the appellants had been decreed for mandatory injunction.

Brief facts of the case are that, plaintiffs/appellants are owners of in possession of the agricultural land comprising 59 kanals 3 marlas, situated in the revenue estate of vilalge panchi Garjran, Tehsil Ganaur, District Sonapat. Plaintiff No. 1 and his father late Tara Singh became the owner in possession of the suit land vide judgment and decree dated 02.12.1985 passed by civil Court in civil Suit No. 18/85 and since then, they have been continuing as owners in possession of the suit land. The plaintiffs

purchased some property in the State of Punjab in the year 1986-87 and leased out the suit land to one Balbir Singh Bedi, since deceased. Balbir Singh Bedi died in october, 1988 and after his death, the plaintiffs started cultivating the land on Betai thorough one Baishak Singh son of Mooli Singh and Mahabir son of Kanwar Singh of Village panchi Gunjan. In the year 1992 the suit land was wrongly mutated in the name of Gram Panchayat on which they filed civil suit No. 258 of 11.02.1994 which was decided on 24.02.1996 in their favour. Baishakh Singh their tenant died in may, 2002. They came to know about this fact in october 2002 and came to village Panchi Gurjran to see the land but Mahabir Parsad Jain son of Baru Mal of Ganuar Mandi raised a dispute regarding payemnt of some money. Arbitration proceedings were initiated to settle the dispute and in executing the proceedings they were taken to the Delhi at the place of business of Mahabir Parsad where they obtained thumb impression on various papers on the pretext of executing an affidavit to empower them to act as arbitrator and in good faith they thumb marked the same on 24.10.2002 and 26.11.2002. Thereafter, arbitration proceedings failed. On inquiry they came to know that defendants No. 1 to 3 throught fraud and misrepresentation obtained their thumb impression on power of attorneys and agreement to sell and receipt regaridng payment of Rs. 19 lacs as earnest money. The power of attorney dated 26.11.2002 and agreement dated 26.11.2002 are the result of fraud and misrepresentation. The documents were forged documents.

Notice of the suit was given to the defendants. Defendant/respondents no. 1 to 3 filed their joint written statement raising anumber of preliminary objections as to maintainability, locus standi,

estoppel and concealment of material facts.

Vide order dated 20.10.2004 passed by the Learned Additional Civil Judge (Senior Division) the suit of the plaintiffs qua defendant No.4 was dismissed as they failed to get the service effected upon him despite availing ample opportunities. Thereafter, plaintiff filed the plaint with the title suit for permanent injunction and mandatory injunction and in the relief clause plaintiffs prayed for a decree of mandatory injunction.

On the pleadings of the parties, following issues were framed:

- (i) Whether the defendants have occupied the suit land illegally and forcibly during the pendency of the present suit? OPP
- (ii) If issue No. 1 is proved, whether the plaintiffs are entitled for relief of mandatory and permanent injunction qua the suit land mentioned in para No. 1 in the plaint? OPP
- (iii) Whether the suit of the plaintiffs is not maintainable in the present form? OPD
- (iv) Whether the defendant No. 5 is a bonafide purchaser of the suit land? OPD
- (v) Whether the plaintiffs are estopped by their own act and conduct to file the present suit? OPD
- (vi) Relief.

On the basis of evidence produced by both the parties, learned trial court deciding issues as under:

- (i) Issue No. 1 and 2 in favour of plaintiffs.
- (ii) Issue No.3 against the defendants.
- (iii) Issue No.4 against the defendant No.5.

(iv) Issue No. 5 against the defendants.

(v) Relief-suit decreed.

Feeling aggrieved with the findings of the trial court, appellants/defendants filed the appeal before the appellate court.

Learned appellate Court reversed the findings of the lower court.

It has been observed that to prove the possession of the plaintiffs, Major Singh examined as PW1 he nowhere deposed that they had ever taken the possession of the land from Mahabir or Mahabir son of Kanwar Singh ever delivered the possession of the suit land to them. Except his solitary statement there is no oral evidence on the file. It is not proved that on the date of filing of the suit the plaintiffs-appellants during the pendency of the suit is concerned, there is no iota of evidence on the file in this regard. It has not been proved when the plaintiffs/appellants were dispossessed by defendants/respondents from the suit land. Even plaintiffs/appellants are not proved to be in possession of the suit land on the date of filing of the suit. Even to prove their ownership and possession over the suit land the plaintiffs/appellants have placed on file the copy of jamabandi for the year 1994-95 Ex. P1, Copy of Jamabandi for the year 1999-2000 and copy of jamabandi for the year 2004-05 as Ex. P3. Ex. P1 Panchayat Deh is the owner and Mahabir son of Baru Mal is in possession of the suit land being co-sharer (hisedar) whereas in Khasra No.99/10/1 Mahabir son of Baru Mal is shown to be in possession as gair Marusi. Similar is the entries incorporated in the jamabandi for the year 1999-2000 Ex. P2, Ex. P3 is the copy of jamabandi for the year 2004-05 i.e. After filing of the suit.

So far as ownership over the suit land is concerned, no doubt the

revenue record placed on the file by the plaintiffs/appellants is silent. The plaintiffs/appellants alleged themselves to be owner of the suit land and alleged that the power of attorney dated 26.11.2002 Ex. P11 was the result of fraud played upon them and the same was got executed under the grab of execution of agreement for appointment of arbitrator. In the Cross examination of PW1 Major Singh has not uttered even a single line that their thumb impression were obtained by playing fraud upon them.

It is further observed that Ex. P11 is the registered General Power of Attorney. The plaintiffs/appellants alleged that by executing Ex. P18 and Ex. P19 cancellation deed of the General Power of Attorney dated 26.11.2002 ex. P11. A perusal of the Ex. P18 and Ex. P19 reveals that they have admitted that they executed a registered general power of attorney in favour of Ramesh Kumar and Jagbir Singh regarding the suit land and without assigning any reason rather mentioned that due to unavoidable circumstances, they revoked the same. Irrevocable power of attorney cannot be cancelled and *Om Parkash Versus Tulli Ram and Others (Supra)* the case law relied upon by the plaintiffs that general power of attorney can be cancelled is not applicable to the facts of the case. In the case law relied upon by the plaintiffs/appellants the general power of attorney was not irrevocable whereas in the present case general power of attorney EX. P11 is irrevocable power of attorney. After execution of the General Power of Attorney dated 26.11.2002 Ex. P11 Ramesh Kumar and Jagbir Singh further sold the land.

Since the allegations regarding fraud and misrepresentation has not been made out and appeals have rightly been allowed and suit has been dismissed by the lower appellate Court.

It is also observed that the suit has been filed on behalf of the plaintiffs through Sant Singh son of Baz Singh in the capacity of their general power of attorney holder but neither there is any statement of Sant Singh nor there is copy of General Power of attorney on file. Even on the power of attorney in favour of shri Mahesh Pahal, Advocate, thumb impression of Sant Singh has been affixed. But perusal of the file shows that there is no power of attorney in favour of Shri Mahesh Pal, Advocate given by Balwant Singh. Neither the Sant Singh nor Balwant Singh appeared into the witness box. PW1 Major Singh, no where deposed that he ever authorized shri Shant Singh to file the suit on their behalf. In the absence of signature of the plaintiffs/appellants on the plaint and vakalatnama in favour of Advocate and in the absence of copy of G.P.A., the suit filed by Sant Singh cannot be said to be the suit filed by the plaintiffs.

Keeping in view the facts and circumstances of the cases, no illegality, much less perversity has been pointed out in the judgment of the lower appellate court, warranting interference by this Court.

No substantial question of law arises for consideration in this appeal.

Hence, both the appeal stands dismissed.

22.02.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned Yes

Whether reportable No